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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	No. CR 05-00812 RMW
)	
Plaintiff,	)	REVISED REQUEST BY THE PARTIES
	)	TO VACATE THE CURRENT
v.	)	PRETRIAL CONFERENCE AND TRIAL
	)	DATES BASED ON COURT'S
	)	SCHEDULE AND UNAVAILABILITY
SUIBIN ZHANG,	)	OF KEY WITNESSES; ORDER
	)	[PROPOSED]
)	
Defendant.	)	DATE: November 15, 2010
	)	TIME: 9:00 a.m.
)	
	)	Before The Honorable Ronald M. Whyte

As the parties advised the Court this morning in open court, defendant and the government, through their respective counsel, hereby stipulate, subject to the Court's approval, that the trial of the above-captioned case be continued from its currently-scheduled date, November 29, 2010, to January 10, 2011, or as soon thereafter as the trial may be held consistent with the Court's schedule. The parties further request that the scheduled date of November 18, 2010, remain on

1 calendar, but that the hearing on that date be solely to address defendant's motions to dismiss
2 counts and to suppress evidence, and that any evidentiary hearing to be held regarding the motion
3 to suppress evidence (assuming the Court grants such a hearing) be held at a future date that is
4 convenient to the Court and consistent with the witness's schedules – presumably in December
5 2010. Finally, the parties jointly request that the Pretrial Conference be rescheduled to December
6 16, 2010, at 2:00 p.m.

7 The reasons for the stipulation are three-fold: first, key witnesses needed by both sides are
8 unavailable during the period currently scheduled for trial. One witness, identified here as P.V.,
9 was under subpoena by the defense and was also going to be a witness for the government. P.V.
10 has advised the parties, through counsel, that he has prepaid tickets to be out of the country on
11 personal travel from November 18 through December 9, 2010. Another defense witness, M.L.,
12 will be out of the country until at least December 3, 2010, on business travel. The parties have
13 been also advised by counsel for Marvell that other current and former employees of Marvell,
14 whose attendance at trial Marvell's counsel has been working to facilitate, have told him that the
15 timing of the trial, coming so close to the Christmas holiday, is problematic for them.

16 Second, the Court's published schedule reflects unavailability during the week of
17 December 6, 2010. Both sides agree that having this trial begin, then be interrupted for one week,
18 only to resume again the week before Christmas, would be a bad idea. Neither side wants to have
19 the jury pressured to reach a decision so that they can get home in time for the holidays.

20 Third, the parties just received the Clerk's Notice that the hearing on defendant's Motion
21 to Dismiss Counts One through Three of the Superseding Indictment has been continued until
22 November 18, 2010. Whatever ruling the Court makes in response to that motion will require
23 some time for the parties to digest including, from the government's perspective, time to consider
24 whether to file an interlocutory appeal in the event the motion is decided in favor of the defense.¹

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26 ¹ The government is not saying with certainty that it would appeal, only that the option
would have to be considered, in light of the pending interlocutory appeal in *U.S. v. Nosal*, CR 08-
0237 MHP.

1 The parties agree that the time between today's date and January 10, 2011 should be
2 excluded from the Speedy Trial Clock based on the need for effective defense preparation and
3 continuity of defense counsel, the complexity of the case, and in light of the facts set forth in this
4 stipulation and those articulated this morning in open court. 18 U.S.C. § § 3161(h)(7)(A) and
5 (B)(i) and (ii).

6 Dated: November 15, 2010

7 _____/s/
8 MANUEL U. ARAUJO
Assistant Federal Public Defender

9 Dated: November 15, 2010

10 _____/s/
11 DAVID R. CALLAWAY,
Assistant United States Attorney

12 **ORDER**

13 For the reasons set forth by the parties in the stipulation above, and good cause
14 appearing,

15 IT IS HEREBY ORDERED as follows:

16 (1) the Pretrial Conference scheduled for Thursday, November 18, 2010, is VACATED.

17 (2) the parties shall nonetheless appear on that date, but for argument on defendant's
18 motions to dismiss counts one through three of the superseding indictment and to suppress
19 evidence, and for the scheduling of an evidentiary hearing on the latter motion, should the
20 Court decide such a hearing is appropriate;

21 (3) the jury trial currently scheduled to begin on November 29, 2010, is also
22 VACATED. The trial shall now begin on Monday, January 10, 2011, with a final pretrial
23 conference to be held on Thursday, December 16, 2010, at 2:00 p.m.; and finally,

24 //

25 //

26 _____

1 (4) the time between today's date and the beginning of trial on January 10, 2011, is
2 excluded from the Speedy trial clock based on the need for effective defense preparation and
3 continuity of defense counsel, the complexity of the case, and in light of the facts set forth in
4 this stipulation and articulated by the parties today in open court. 18 U.S.C. § § 3161(h)(7)(A)
5 and (B)(i) and (ii).

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7 RONALD M. WHYTE
8 United States District Judge
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